

1954

June 16

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SEP 22 1998

CONCORD, N.H.

Barley I. Platts, Commissioner
Department of Agriculture
State House
Concord, New Hampshire

Dear Sir:

You have this date sought the advice of this office with respect to the interpretation of Laws 1951, c. 185, as the same may affect your department and the rights of one of your employees. We are pleased to state our views herewith.

You state the problem hypothetically, and ask concerning the rights of such employee to reinstatement in his present position in state service if he voluntarily goes on active duty with the Armed Forces of the United States in August, 1954; specifically, you desire to know the length of time he may remain on active duty and still be entitled to reinstatement.

Upon a reading of the entire statute it is our opinion that an employee going on active duty in the manner you describe is entitled to reinstatement in his present position (with the promotional advantages set forth in section 8, if any), provided he makes application therefor within sixty days after he is discharged from active duty, or within sixty days after he has a right to be discharged.

The statute was obviously intended to be in furtherance of the interests of the United States arising because of the Korean military operations, at the same time protecting state employees who might enter the armed forces either voluntarily or otherwise. See section 1, subpar. II. In order to take advantage of the statute, the employee must enter upon active duty prior to the termination of the "present emergency" as proclaimed by the Governor. If, therefore, the Governor shall have proclaimed the end of such emergency prior to the time the employee enters upon active duty, he will not receive the benefits otherwise provided by the statute.

Harley I. Fitts, Commissioner

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Consistently therewith, an employee who desires to receive the benefits of the statute may not, after a proclamation that the emergency is at an end, renege his obligation to remain on active duty once having been relieved of such obligation. That is to say, the emergency having been declared to be over, an enlisted man could not expect to take advantage of the chapter should he be recalled, intending to apply for reinstatement at the end of the new enlistment. In the same manner an officer, being entitled to release from active duty after the proclamation, could not voluntarily bind himself to serve a further period with a view to receiving the benefits of the chapter upon the occurrence of a subsequent opportunity for release.

In accordance with the second request contained in your letter I have examined the files in the office of the Secretary of State and find that as of this date the Governor has not proclaimed the end of the present emergency.

Very truly yours,

Warren E. Waters
Deputy Attorney General

W.E.W.
cc: Personnel Commission